

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

WAYNE DUKE KALBAUGH,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-18-0951-C
)	
JIMMY MARTIN, Warden,)	
)	
Respondent.)	

ORDER

Petitioner, a state prisoner appearing pro se, has filed a Notice of Appeal which will be construed as a request for a Certificate of Appealability (“COA”). (See Dkt. No. 36.) Before his appeal may proceed, Petitioner must be granted a COA. See 28 U.S.C. § 2253(c)(1)(A); Montez v. McKinna, 208 F.3d 862, 869 (10th Cir. 2000) (holding that § 2253(c)(1)(A) requires a state prisoner to obtain a COA regardless of whether he is seeking relief under § 2254 or under § 2241).

Petitioner is entitled to a COA only upon making a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Petitioner can make such a showing by demonstrating that the issues he seeks to raise are deserving of further proceedings, debatable among jurists of reason, or subject to different resolution on appeal. See Slack v. McDaniel, 529 U.S. 473, 483 (2000) (“[W]e give the language found in § 2253(c) the meaning ascribed it in Barefoot [v. Estelle], 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the merits, . . . [t]he petitioner must demonstrate that reasonable

jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 484.

Here, Petitioner has failed to offer any basis for reasonable debate. As the Report and Recommendation ("R&R") of the Magistrate Judge made clear, Petitioner's case cannot proceed, as his claims fail to raise issues warranting habeas relief. These determinations are not reasonably debatable and, as the Court noted in adopting the R&R, warrant no discussion or analysis, as the Magistrate Judge thoroughly and correctly addressed the issues. Accordingly, Petitioner's request for a COA is denied.

For these reasons, Petitioner's Notice of Appeal is construed as a Request for a Certificate of Appealability (Dkt. No. 36) and is DENIED.

IT IS SO ORDERED this 15th day of October, 2019.


ROBIN J. CAUTHRON
United States District Judge